

**IT 02-13**

**Tax Type: Income Tax**

**Issue: Reasonable Cause on Application of Penalties**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE & JANE DOE,  
Taxpayers**

**No. 02-IT-0000  
SSN: 000-00-0000  
Tax yr. 1990—1995  
Charles E. McClellan  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Ms. Jessica V. Arong, Mr. Rickey A. Walton, Special Assistant Attorneys General, and Mr. Todd Zoellick, senior law student, for the Department of Revenue; Mr. Stephen Lewis of Cooke & Lewis for the taxpayers.

**Synopsis:**

This matter arose from a timely filed protest to a Notice of Deficiency (“NOD”) issued by the Department to John & Jane Doe (“taxpayers”) on January 15, 2002, for income taxes assessed for the calendar years 1990, 1991, 1992, 1993, 1994, and 1995. An evidentiary hearing was held on October 10, 2002. The parties did not file post-trial briefs

Based on my review of the testimony and documents of record, I recommend that the NOD be made final.

**Findings of Fact:**

John and Jane Doe were married in 1974 and they timely filed their income tax returns on a joint basis from 1974 until 1990 and from 1996 to the present time. Tr. p. 34.

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1. From 1987 to 1990 the taxpayers' income tax returns were prepared by the Northbrook firm of Shapiro & Letsky. Tr. pp. 36, 37.

2. Taxpayers failed to file either federal or Illinois income tax returns on a timely basis for the years 1990 through 1995, the years involved in this matter, Tr. pp. 32, 35.

3. In early 1996, John Doe brought taxpayers' financial records for the period 1990 through 1995 to his accountant to have the tax returns prepared. Tr. p. 41.

4. After John Doe had delivered his financial records to his accountant in 1996, the Internal Revenue Service contacted John Doe regarding the Does' failure to file federal income tax returns for the 1990—1995 years. Tr. p. 8.

5. In September 2002, taxpayers' federal income tax liabilities were resolved after the belated filing of their federal income tax returns for the years 1990 through 1995. Tp. Ex. No. 3.

6. Because the taxpayers failed to file Illinois income tax returns for the 1990—1995 years, on January 15, 2002 the Department issued a Notice of Deficiency to the taxpayers assessing Illinois income tax, interest and penalties for those years based on information received via the Federal Exchange Program. Dept. Exs. No. 1, 2.

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<sup>1</sup> Citations to the transcript of the evidentiary hearing will be cited by page number as "Tr. p. n". Department exhibits will be cited as "Dept. Ex. No. n". Taxpayer exhibits will be cited as "Tp. Ex. No. n".

7. The deficiency calculations were based on taxpayers' consistent filing status of married taxpayers filing jointly. *Id.*

8. John Doe had been under the care of a certified psychiatrist by the name of William D. Carlock during the decades of 1970 and 1980. Tr. p. 10.

9. In 1970, John Doe was diagnosed by Dr. Carlock as suffering from severe depression, anxiety, and obsessive-compulsive disorder, and he was treated for these disorders by Dr. Carlock until 1990, when John Doe stopped treatment despite the fact that he knew that major depression is a chronic illness. Tp. Ex. No. 2.

10. By 1990, John Doe had been working as a bond trader at the Board of Trade for 13 years. Tr. p. 11.

11. During the period of 1990 to 1996 John Doe encountered increasing personal problems, his mental condition worsened and he began having problems with his personal financial affairs. Tr. pp. 11—17.

12. From 1990 until May 31, 1995, John Doe continued trading at the Board of Trade, but he increasingly had trouble keeping track of his trading transactions, although he continued to generate income from trading during that period. Tr. pp. 27—29.

13. In 1995, foreclosure proceedings on the taxpayers' house were instituted and their car was repossessed. Tr. pp. 32—33.

14. During the period 1990 through 1995, John Doe handled the financial affairs of the house, including paying all of the household bills, such as for gas and electricity, but he often paid them late. Tr. pp. 38—40.

15. John Doe resumed treatment with Dr. Carlock on May 23, 1995 when he had symptoms of and began treatment for anxiety, depression, guilt over his parents' aging and illnesses, distress regarding distance and hostility within his marriage, serious concern over symptoms of arthritis in the cervical area of the spine, general anger, irritability, poor sleep, withdrawal from friends, family and pleasure, a growing sense of helplessness and hopelessness relating the these maladies, evolving headaches, neck and shoulder girdle pain, and upper limb parasthesias all of which made him dysfunctional in the trading pit. He left the trading pit on May 31, 1995. Tr. pp. 17, 27—29; Tp. Ex. No. 1.

16. John Doe has continued to be under the care of Dr. Carlock, seeing him on a weekly basis. Tr. pp. 14, 20.

17. John Doe has been on lifetime disability through Mutual Insurance Co. since 1996. Tr. p. 12.

**Conclusions of Law:**

In the taxpayers' counsel's closing argument, he made it clear that taxpayers are not contesting the tax assessment. They are contesting the penalty assessments, arguing that John Doe's mental illness is evidence of reasonable cause to justify abatement of the penalties assessed by the Department for late payment, late filing, and underpayment of estimated tax.

Section 914 of the Illinois Income Tax Act (35 ILCS 5/101, *et seq.*) provides that the Department's *prima facie* case is established by the admission into evidence of the Department's determination of the correct amount of tax due and the Notice of Deficiency. *Balla v. Dept. of Revenue*, 96 Ill.App.3d 293 (1st Dist. 1981). To overcome the Department's *prima facie* case the taxpayer must present consistent and probable

evidence identified with its books and records. *Id.* The taxpayer's documentary evidence must be sufficient to support its claims. Testimony alone is not enough. *Mel-Park Drugs, Inc. v. Department of Revenue*, 218 Ill.App.3d 203, (1st Dist. 1991); *A.R. Barnes & Co. v. Department of Revenue*, 173 Ill. App. 3d 826, 833-34 (1st Dist. 1988)

Section 804 of the Act imposes a penalty for underpayment of estimated tax. Section 1001 imposes a penalty for failure to file a return, and Section 1005 imposes a penalty for late payment. All three penalties are assessed under Section 3 of the Uniform Penalty and Interest Act ("UPIA"). 35 ILCS 735/3-3. Section 3-8 of the UPIA, provides that no penalties are to be imposed if the failure to pay or to file is due to reasonable cause. 35 ILCS 735/3-8. Reasonable cause is determined under regulations promulgated by the Department.

The regulations provide that reasonable cause is to be determined on a case by case basis taking into account all pertinent facts and circumstances. 86 Admin. Code ch., I, § 700.400 at ¶ (b) The most important factor is whether the taxpayers made a good faith effort to comply with the law and if they exercised ordinary business care and prudence in doing so. *Id.* at ¶ (c). The regulations also provide a number of examples of situations that demonstrate reasonable cause for abatement. The closest example to the Does' case states that reasonable cause may be based on the death, incapacity or serious illness of the taxpayer (or his tax preparer) or a death or serious illness in his or her immediate family which causes a late filing and payment of tax due. 86 Admin Code ch. I, § 700.400(e)(2).

In this case, the record shows that John Doe was seriously ill and had serious financial problems during the 1990—1995 period. However, he continued to work until

May 31, 1995, and during this period he paid household bills, such as for gas and electricity, although he paid them late. During this same time period, although he paid household bills, he did nothing to satisfy either his federal or Illinois income tax return filing obligations. However, the record does not explain why, if he could take care of the household bills, he could not have had the tax returns prepared and filed. There is nothing in the record to suggest that during this time frame he could not have given the records to the accountant he relied on to prepare the tax returns in years prior to 1990. These facts demonstrate that he failed to make a good faith effort to comply with the law. Therefore, there is not sufficient evidence to show reasonable cause for John Doe's failure to file income tax returns for the years at issue.

In addition, although the record in this case establishes that John Doe handled the financial affairs for he and his wife, they filed their federal and state income tax returns jointly as husband and wife before, during, and after the years at issue. Section 502(c)(1) of the Act provides that a married couple filing joint income tax returns are jointly and severally liable for them. 35 ILCS 5/502(c)(1). Therefore, even though John Doe had undertaken the responsibility of managing the family's financial affairs, including tax return preparation, during the years prior to the years at issue, Jane Doe was not relieved of her joint and several liability.

Even if John Doe's illness caused him to fail to file tax returns during the years at issue, the record does not establish reasonable cause for abatement. Considering the disclosures in the record regarding John Doe's illness during the years at issue, it is reasonable to conclude that Jane Doe must have been aware of her husband's problems. However, there is nothing in the record to explain why she did not contact the

accountants or otherwise attempt to make sure that the tax returns were prepared and timely filed. The record lacks any evidence to show that she made any effort to comply with the law.

For all of the above reasons, I find that taxpayers have failed to produce sufficient testimony and documentary evidence to show reasonable cause to abate the penalties assessed. Therefore, I recommend that the Notice of Deficiency be made final.

Date: 11/25/2002

Charles E. McClellan  
Administrative Law Judge